

DOCKET FILE COPY ORIGINAL ORIGINAL

LAW OFFICES
LEVENTHAL, SENTER & LERMAN

SUITE 600
2000 K STREET, N.W.
WASHINGTON, D.C. 20006-1809

RECEIVED

FEB 12 1993

TELEPHONE
(202) 429-8970

TELECOPIER
(202) 293-7783

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

TELEX
822-9260 NPL WSH

February 12, 1993

OF COUNSEL
TOBEY B. MARZOUK

NORMAN P. LEVENTHAL
MEREDITH S. SENTER, JR.
STEVEN ALMAN LERMAN
RAUL R. RODRIGUEZ
DENNIS P. CORBETT
BARBARA K. GARDNER
STEPHEN D. BARUCH
SALLY A. BUCKMAN
LAURA B. HUMPHRIES
EVAN D. CARB
LYNN M. CRAKES
DAVID S. KEIR*

* ADMITTED VA ONLY

DOCKET FILE COPY ORIGINAL

BY HAND DELIVERY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

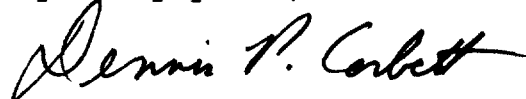
Re: MM Docket No. 92-106
File No. BPH-910213ME
Bethany Beach, Delaware

Dear Ms. Searcy:

On behalf of Jeffery Scott, permittee of the
above-referenced new FM station on Channel 278A at Bethany Beach,
Delaware, I am transmitting herewith an original and four copies
of his Request for Fee Refund.

Should there be any questions concerning this matter,
please contact the undersigned.

Very truly yours,



Dennis P. Corbett

DPC:kbs
Enclosures

No. of Copies rec'd
LABODE

0+4

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

RECEIVED
FEB 12 1993
FEB 12 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re the Applications of)	MM Docket No. 92-106
)	
JEFFERY SCOTT)	File No. BPH-910213ME
)	
EICHER COMMUNICATIONS, INC.)	File No. BPH-910213MF

For Construction Permit for
New FM Station on Channel 278A
at Bethany Beach, Delaware

To: The Managing Director

REQUEST FOR FEE REFUND

Jeffery Scott ("Scott") pursuant to Section 1.1111(c)(4) of the Communication's Rules, hereby requests a refund of his hearing designation fee paid in the above-captioned proceeding.

1. On July 15, 1991, Scott filed his Hearing Fee in the above-captioned case, together with a check make payable to the Commission in the amount of \$6,760, the hearing designation fee specified in Section 1.1104 of the Commission's Rules, 47 C.F.R. § 1.1104. Scott has attached a copy of his hearing fee transmittal as Appendix 1 to this Request.

2. By Hearing Designation Order, released May 14, 1992, the Commission designated the Scott application for

comparative hearing. See Jeffery Scott, 7 FCC Rcd 3041 (M. Med. Bur. 1992).

3. On June 3, 1992, Scott joined in the filing of a timely "Joint Request for Approval of Settlement Agreement," which contemplated the approval of an agreement whereby competing applicant Eicher Communications, Inc. ("Eicher") would dismiss its application in consideration of a settlement payment. The Joint Request was filed within the deadline for settlements for which the Commission will refund hearing fees. 47 C.F.R. § 1.1111(c)(4). See also, Report and Order on Reform of Comparative Hearing Process, 6 FCC Rcd 157, 158 (¶ 7) (1990).

4. By Memorandum Opinion and Order, FCC 92M-831, released July 31, 1992, a copy of which is contained in Appendix 2 hereto, the Presiding Administrative Law Judge granted the Joint Request, approved the Settlement Agreement between Eicher and Scott, dismissed Eicher's application, granted the Scott application and terminated MM Docket No. 92-106.

5. Scott's Request complies in all respects with the fee refund provision of 47 C.F.R. § 1.1111(c)(4). Report and Order on Reform of Hearing Process, supra. A similar request by Eicher has already been granted. Accordingly, the Managing Director should refund Scott's hearing fee.

WHEREFORE, in light of the foregoing, Scott respectfully requests that the Managing Director refund \$6,670 to Scott.

Respectfully submitted,

JEFFERY SCOTT

By: 
Dennis P. Corbett

Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, DC 20006-1809
(202) 429-8970

February 12, 1993

His Attorney

APPENDIX 1

NORMAN P. LEVENTHAL
MEREDITH S. SENTER, JR.
STEVEN ALMAN LERMAN
RAUL R. RODRIGUEZ
DENNIS P. CORBETT
BARBARA K. GARDNER
STEPHEN D. BARUCH
SALLY A. BUCKMAN
LAURA B. HUMPHRIES
JOHN B. GLICKSMAN
MAUREEN A. O'CONNELL
LYNN M. CRAKES*
DAVID S. KEIR*

FCC
MUL 10 100
LAW OFFICES
LEVENTHAL, SENTER & LERMAN
SUITE 600
2000 K STREET, N.W.
WASHINGTON, D.C. 20006-1809

TELEPHONE
(202) 429-8970

TELECOPIER
(202) 293-7783

TELEX
710-822-9260 NPL WSH

July 15, 1991

OF COUNSEL
MICHAEL R. KLIPPER
TOBEY B. MARZOUK

* ADMITTED VA ONLY

BY R&S COURIERS, INC.

Federal Communications Commission
Mass Media Services
P.O. Box 358170
Pittsburgh, PA 15251-5170

Re: Jeffery Scott
BPH-910213ME
Bethany Beach, Delaware

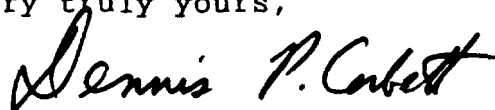
Dear Sir or Madam:

On behalf of Jeffery Scott, applicant for a construction permit for a new FM station on Channel 278A at Bethany Beach, Delaware (BPH-910213ME), I am transmitting herewith Scott's hearing fee in the amount of \$6,760. This fee is being submitted in accordance with the procedures outlined in the Commission's Memorandum Opinion and Order in Gen. Doc. 90-264, FCC 91-154, released May 15, 1991.

Also enclosed is a completed FCC Form 155. Finally, the "Return Copy" enclosed with this application should be date-stamped by you and returned to the R&S Couriers representative delivering this package.

Should you have any questions concerning this matter, please contact the undersigned.

Very truly yours,



Dennis P. Corbett

DPC:kb

Enclosures

cc (w/encl.): Mr. Jeffery Scott

cc (w/o encl.): Stephen Diaz Gavin, Esq.

JEFFERY SCOTT
12 THE NARROWS 302-537-0466
FENWICK ISLAND, DE 19975

990

62-31 ★
311

Pay to the order of



Sussex Trust

Bethany Beach, Delaware 19930

⑆03⑆⑆003⑆9⑆0990 ⑆0320⑆780⑆

FEDERAL COMMUNICATIONS COMMISSION
FEE PROCESSING FORM

FOR
FCC
USE
ONLY

Please read instructions on back of this form before completing it. Section I MUST be completed. If you are applying for concurrent actions which require you to list more than one Fee Type Code, you must also complete Section II. This form must accompany all payments. Only one Fee Processing Form may be submitted per application or filing. Please type or print legibly. All required blocks must be completed or application/filing will be returned without action.

SECTION I

APPLICANT NAME (Last, first, middle initial)

Jeffery Scott

MAILING ADDRESS (Line 1) (Maximum 35 characters - refer to Instruction (2) on reverse of form)

c/o Leventhal, Senter & Lerman

MAILING ADDRESS (Line 2) (if required) (Maximum 35 characters)

2000 K Street, N.W., Suite 600

CITY

Washington

STATE OR COUNTRY (if foreign address)

D.C.

ZIP CODE

20006-1809

CALL SIGN OR OTHER FCC IDENTIFIER (if applicable)

910213ME

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in FCC Fee Filing Guides. Enter in Column (B) the Fee Multiple, if applicable. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number entered in Column (B), if any.

(A)	(B)	(C)								
FEE TYPE CODE	FEE MULTIPLE (if required)	FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY							
(1) <table><tr><td>M</td><td>W</td><td>R</td></tr></table>	M	W	R	<table><tr><td></td><td></td><td></td><td></td></tr></table>					\$6,760.00	
M	W	R								

SECTION II — To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

(A) FEE TYPE CODE	(B) FEE MULTIPLE (if required)	(C) FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY								
(2) <table><tr><td></td><td></td><td></td></tr></table>				<table><tr><td></td><td></td><td></td><td></td></tr></table>					<table><tr><td>\$</td></tr></table>	\$	
\$											
(3) <table><tr><td></td><td></td><td></td></tr></table>				<table><tr><td></td><td></td><td></td><td></td></tr></table>					<table><tr><td>\$</td></tr></table>	\$	
\$											
(4) <table><tr><td></td><td></td><td></td></tr></table>				<table><tr><td></td><td></td><td></td><td></td></tr></table>					<table><tr><td>\$</td></tr></table>	\$	
\$											
(5) <table><tr><td></td><td></td><td></td></tr></table>				<table><tr><td></td><td></td><td></td><td></td></tr></table>					<table><tr><td>\$</td></tr></table>	\$	
\$											
ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (5), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.			<table><tr><td>TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING</td></tr><tr><td>\$ 6,760.00</td></tr></table>	TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING	\$ 6,760.00	<table><tr><td>FOR FCC USE ONLY</td></tr><tr><td></td></tr></table>	FOR FCC USE ONLY				
TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING											
\$ 6,760.00											
FOR FCC USE ONLY											

APPENDIX 2

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 92M-831
03740

In re Applications of)	MM DOCKET NO. 92-106
)	
JEFFREY SCOTT)	File No. BPH-910213ME
)	
EICHER COMMUNICATIONS, INC.)	File No. BPH-910213MF
)	
For Construction Permit for a)	
New FM Station on Channel 278A)	
in Bethany Beach, Delaware)	

MEMORANDUM OPINION AND ORDER

Issued: July 29, 1992;

Released: July 31, 1992

Background

1. This is a ruling on a Joint Request For Approval Of Settlement Agreement that was filed on June 3, 1992, by Eicher Communications, Inc. ("Eicher") and Jeffrey Scott ("Scott"), and on a related Petition For Leave To Amend that was filed by Scott on June 3, 1992. Also considered are a Supplement To Joint Request For Approval Of Settlement Agreement filed by Eicher on June 16, 1992, and Mass Media Bureau ("Bureau") Comments In Support Of Joint Request For Approval Of Settlement Agreement filed on June 18, 1992.

Facts

2. Eicher and Scott are the only two exclusive applicants for a construction permit for a new FM Station on Channel 278 at Bethany Beach, Delaware. See Hearing Designation Order DA 92-559, released May 14, 1992, reported at Jeffrey Scott, et al., 7 F.C.C. Rcd 3041 (MM Bur. 1992).

3. The Settlement contemplates that Eicher's application will be voluntarily dismissed with prejudice in return for a payment of a sum of money that is not to exceed \$18,000, representing its legitimate and prudent expenses. In addition, the parties have entered into a Consulting Agreement pursuant to which Scott will pay Eicher \$17,000 to provide broadcast station financial planning and management services to Scott for a period of one year. Scott contemplates withdrawing his integration and diversification commitments and Scott would receive the grant.

4. The proposed Amendment addresses an issue set in the Hearing Designation Order, supra at Paras. 5 and 9 on how Scott "propose[s] to resolve any RF exposure to workers" on his proposed tower. Scott was permitted to amend his tower site to cure a short-spacing. See Hearing Designation Order, supra at Paras. 2-3. Scott proposes to construct a new tower and commits to shut down station operations as necessary in order to protect workers. On July 28, 1992, the Assistant Chief, Audio Services Division, advised the Presiding Judge in writing:

Upon examination of the enclosed pleading [Petition For Leave To Amend], the Bureau finds that the information satisfies the requirements of 47 C.F.R. §1.1311.

Accordingly, the Bureau requests that the contingent environmental issue specified as to this applicant be eliminated from the Hearing Designation Order.

See ltr. dtd. July 28, 1992 from Assistant Chief Jan Gay to the Presiding Judge. Based on the unqualified statement of the Bureau quoted above and the representations of Scott in its Petition For Leave To Amend, the environmental issue against Scott is considered as deleted from the designation order.

5. Eicher has set forth in its Supplement an itemization which sufficiently demonstrates to the Presiding Judge that its legitimate and prudent expenses incurred in this proceeding are in excess of \$18,000. Also, it is noted that Eicher is a certified public accountant. The Consulting Agreement reflects that Eicher will be performing services for which he is qualified for the limited period of only one year in return for \$17,000. This appears to be a bona fide and reasonable arrangement for services. The Bureau concurs with that conclusion, citing Texas Television, Inc., 91 F.C.C. 2d 1043 (Review Bd 1982).

6. In his Petition For Leave To Amend, Scott also asks that he be permitted to withdraw his integration proposal and his proposal to classify his interest in Great South Broadcasting as nonattributable. This is a universal settlement and the agreement was filed by the deadline for filing a Notice of Appearance. Therefore, Scott readily meets the Commission standard for withdrawing integration/diversification commitments incident to a timely filed universal settlement. See Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 F.C.C. Rcd 157 (1990), recon. granted in part, 6 F.C.C. Rcd 3403 (1991) at Para. 6 (on reconsideration Commission extends deadline for filing withdrawal of integration and diversification proposals to exhibit exchange date). The Bureau concurs that Scott's withdrawal of his integration and divestiture commitments are timely and should be accepted. See Bureau Comments at 3. The Presiding Judge will permit Scott to withdraw his proposals.

Settlement

7. The statutory standard to be applied in accepting or rejecting a settlement proposal provides:

The Commission shall approve the agreement only if it determines that (a) the agreement is consistent with the public interest, convenience or necessity, and (b) no party to the agreement filed its application for the purpose of reaching or carrying out such agreement.

Communications Act of 1934, as amended, §311(c)(3). See Oak Television of Everett, Inc., et al., 93 F.C.C. 2d 926, 52 Radio Reg. 2d (P&F) 995 (Review Bd. 1983).

8. In this case, the Joint Petition was filed timely in accordance with §73.3525. The parties have represented under penalty of perjury that their applications were not filed for the purpose of reaching or carrying out a settlement agreement and that the agreement is in the public interest. Therefore, it is determined that the parties have complied with §73.3525(a)(1) and (a)(2) of the Commission's rules. Also, the Bureau has no objection to approving the settlement.

9. There has been compliance with the local publication requirements of the Commission's rules. 47 C.F.R. §73.3594(g). The parties also qualified for a waiver of the required hearing fees. 47 C.F.R. §1.221(g). Eicher has made a satisfactory showing that its expenses are reasonable and prudent, the Consulting Agreement is reasonable in its terms, duration and compensation, and Scott has met the Commission's standard for withdrawing integration and diversification commitments incident to settlement. Scott has provided for protection of persons from environmental hazard at and around its antenna site to the Bureau's satisfaction. Commission resources will be conserved by the termination of this case prior to hearing. In addition, the public interest will be served by approval of this agreement which will eliminate the need for protracted litigation and the corresponding utilization of resources, and which ensures that a new FM service will be delivered to Bethany Beach, Delaware at an earlier date. Accordingly, it is appropriate that the proposed settlement be accepted.

Order

IT IS ORDERED that the Joint Request For Approval of Settlement Agreement filed on June 3, 1992, by Jeffrey Scott and Eicher Communications, Inc. IS GRANTED and the Agreement IS ACCEPTED.

IT IS FURTHER ORDERED that the Petition For Leave To Amend filed on June 3, 1992, by Jeffrey Scott IS GRANTED and the Amendment IS ACCEPTED.

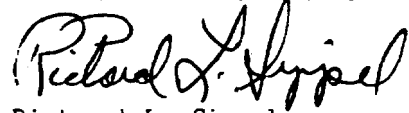
IT IS FURTHER ORDERED that the Application of Eicher Communications, Inc. (File No. BPH-910213MF) IS DISMISSED with prejudice.

IT IS FURTHER ORDERED that the Application of Jeffrey Scott (File No. BPH-910213ME) for a construction permit for New FM Channel 278A at Bethany Beach, Delaware, IS GRANTED.

IT IS FURTHER ORDERED that the integration and diversification proposals of Jeffrey Scott ARE AUTHORIZED TO BE WITHDRAWN by the applicant and ARE NOW NULL AND VOID.

IT IS FURTHER ORDERED that the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

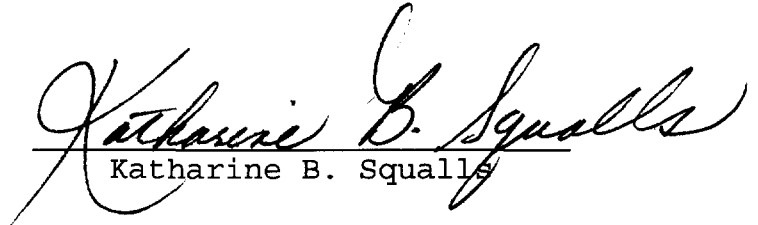
A handwritten signature in cursive script, reading "Richard L. Sippel".

Richard L. Sippel
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Katharine B. Squalls, do hereby certify that a copy of the foregoing "Request for Fee Refund" was mailed, United States first-class mail, postage prepaid, this 12th day of February, 1993 to the following:

*Mr. Andrew Fishel
Managing Director
Federal Communications Commission
Office of the Managing Director
1919 M Street, N.W.
Room 852
Washington, D.C. 20554


Katharine B. Squalls

*By Hand Delivery